IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.167 OF 2005

Mr. Mohandas C. Gurudasani ...Petitioner.

V/s

Mr. Ghanshyam G. Khanchandani
and Anr. ...Respondents.

Mr. S.U. Dhakephalkar for the petitioner.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 23rd February, 2005

P.C.

1. Heard the learned Counsel for the petitioner and

the learned APP for the State.

2. Petitioner is the original accused. A private complaint was filed in the Court of Metropolitan Magistrate, 26th Court, Borivali, Bombay under sections 465, 471, 406, 408, 418, 419 and 420. The application was made by the applicant for recall of process and/or for discharge which was rejected by the Trial Court vide its order dated 29/4/2003. Petitioner, therefore, preferred Criminal Revision Application No.519 of 2003 before the Court of Sessions. The Lower Appellate Court in its order dated 30/9/2004 has observed that the complainant has not led evidence and after opportunity is given to the

complainant to lead the evidence under section 244, the stage of applying for discharge will be made available to the accused. The Lower Appellate Court has observed that in view of the judgment of the Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal and others in Criminal Appeal No.91 of 2002 dated 25/08/2004 the Magistrate has no jurisdiction to reconsider his own order of issuing process.

3. It is clarified that the petitioner shall have every right to apply for discharge under section 245 of the Criminal Procedure Code and the ratio laid down in the case of Adalat Prasad (supra) will not be applicable to the warrant trial wherein application for discharge is preferred under section 245. The Trial Court is directed to consider the application for discharge, after the evidence is led by the complainant under section 244 of the Code of Criminal Procedure.

4. With the above directions, application is disposed of.

V.M. KANADE, J.